

STREAMSIDE PROTECTION

FREQUENTLY ASKED QUESTIONS (FAQs)

Last Updated: August 27, 2008

Note: The proposal is a work in progress.

1. Why is this ordinance being proposed?

In October 2007, the Madison County Commissioners were approached by a group of concerned citizens from the Madison Valley area asking that the County draft an ordinance to require uniformity of streamside setback restrictions for all new building construction along the Madison River and its tributaries. “Uniformity” in this case refers to the desire that the setback restrictions contained within county subdivision regulations be applied to all parcels of land within the proposed planning area.

Construction setbacks from water bodies have been mandatory for property being subdivided on the Madison River since 1993, the Big Hole and Jefferson Rivers since 1994, and countywide since 2000. Unless voluntarily agreed upon by the sub-divider (very rare), setbacks do not apply to parcels created prior to these dates, or to those parcels created outside of subdivision review, i.e. family transfer. Existing subdivision regulations will continue to apply to new parcels created through the subdivision process.

The proposed ordinance would extend setback protection along the entire length of the river or stream within the planning area. The planning area was defined by the county commissioners to include all Madison County waterways east of the Tobacco Root and Gravelly Mountains.

2. Where did this idea originate?

Protecting our rivers and streams from the impacts of over-development has been an on-going topic of discussion for several decades in Madison County. As development concerns increased during the 1990s, the County incrementally incorporated construction setbacks from waterways into the county subdivision regulations. After three years of community discussion, an ordinance requiring construction setbacks for all existing parcels of land was adopted for the Big Hole River in 2004.

From 2005 to the present, the Madison Valley Growth Solutions process has actively engaged the public in a focused discussion on growth-related issues, including protection of our water resources. Based on these discussions, a Madison Valley Growth Management Action Plan was created and adopted by the county as a 2007 amendment to the Madison County Growth Policy. One of the specific actions items identified was uniform implementation of setback regulations in the Madison Valley. A draft streamside protection ordinance, modeled on the

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Big Hole River Ordinance, was presented to the public in January 2008. Since March 2008, the ordinance has been the subject of an intensive steering committee review.

3. What is the proposed ordinance intended to accomplish?

The primary purpose is to minimize the impacts of development in close proximity to environmentally sensitive areas, such as a river or stream. Setbacks or buffer zones are well-established methods of separating potentially incompatible resources or uses.

As proposed, the setback ordinance is to:

- a. Protect the water quality, floodplain, and riparian [streamside habitat] resources of all Madison County waterways east of the Tobacco Root and Gravelly Mountains; and
- b. Protect the visual resources [viewshed] enjoyed from these waterways; and
- c. Provide for the health and safety of the residents of Madison County.

This purpose statement was taken directly from existing subdivision regulations.

4. How does a building impact a river or stream?

Other than visual impacts, buildings typically impact a river or stream indirectly. It's not the building itself that creates the impact, but the site disturbances associated with its construction and maintenance, and the day-to-day activities associated with occupancy. Stream environments are fragile and easily damaged by excessive sedimentation, the introduction of manmade contaminants, the loss of native vegetation, and disruptions to wildlife habitat. Activities that can affect the stream environment include:

- a. Surface runoff of disturbed soils associated with site excavation and road building activities.
- b. Surface runoff of household chemicals, such as herbicides, pesticides, fertilizers, automotive lubricants, coolants, and fuels, etc.
- c. Discharge from overloaded or defective septic systems
- d. Removal of natural streamside (riparian) vegetation to allow for manmade landscaping, such as lawns, parking areas and roadways. Manmade landscapes are typically not as effective as natural vegetation at filtering and stabilizing stream banks.

Setbacks provide a physical separation to moderate these manmade impacts, in effect, acting as a safety net between Man and Nature.

5. What are the proposed setbacks?

Borrowing directly from the existing subdivision regulations, the proposed setback restrictions for all new building construction would be:

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- a. 500 feet from the ordinary highwater mark of the Madison River
- b. 150 feet from the ordinary highwater mark of the Jefferson and South Boulder Rivers
- c. 100 feet from the bank of all other waterways

6. What kind of construction is impacted by the proposed ordinance?

The construction type impacted by the ordinance is still under discussion. As amended by the steering committee, the proposed setback restrictions would apply to all new buildings on property along perennial (continuous flow) or intermittent streams. Pre-existing buildings or structures are not impacted, nor are fencing, landscaping, road building, or grading activities. Existing buildings or structures are allowed to rebuild or expand as long as the new construction does not encroach further toward the river or stream.

7. What if my lot isn't deep enough to allow for a setback and a building site?

The steering committee is evaluating the most appropriate way of dealing with these circumstances. Typically a variance process is used to review and evaluate the situation and arrive at an acceptable compromise that supports the intent of the regulation while protecting the property owner's right to reasonable use of the land.

8. Who's on the steering committee, and what is their role?

After the January 2008 public meeting on the draft ordinance, the county planning office was encouraged to create and facilitate a steering committee-level review of the proposal. A nine member committee of impacted property owners and community leaders was created. The committee first met in March 2008. Their meetings are open to the public, and are advertised in The Madisonian and the Whitehall Ledger. So far, the committee has met seven times to review the proposed ordinance, evaluate scientific data, and recommend amendments.

9. By what authority is the County proposing this ordinance?

The ordinance is proposed under the general authority of County Commissioners and their ability to make and enforce rules as broadly described in 7-5-2101 and 2102, MCA.

10. Won't this proposed setback ordinance "take" away my property rights; is the County going to compensate me for the loss?

The law surrounding the "takings issue" is complex and extensive, ultimately decided by the opinions of 5 individuals on the Supreme Court of the United States. Setback restrictions typically are not considered a taking of property requiring compensation, provided:

- The regulation addresses a legitimate public health, safety, or general welfare concern.
- The regulation does not deprive the property owner of all economically viable use of the property.

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